

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

OCTOBER 17, 2001

IN RE:

DOCKET TO DETERMINE THE COMPLIANCE
OF BELL SOUTH TELECOMMUNICATIONS,
INC.'S OPERATIONS SUPPORT SYSTEMS
WITH STATE AND FEDERAL REGULATIONS

DOCKET NO.
01-00362

ORDER RESOLVING DISCOVERY DISPUTES

This matter is before the Pre-Hearing Officer on the following filings: (1) *BellSouth's Objections to First Interrogatories and Request for Production of Documents of AT&T and SECCA* (hereinafter "*BellSouth's Objections*"); (2) the *Motion of AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association to Compel Responses by BellSouth Telecommunication, Inc. to Their First Set of Interrogatories and First Set of Requests for Production of Documents to BellSouth* (hereinafter "*Motion to Compel*"); (3) *BellSouth Telecommunications, Inc.'s Response to the Motion of AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association to Compel Responses by BellSouth Telecommunication, Inc. to Their First Set of Interrogatories and First Set of Requests for Production of Documents to BellSouth* (hereinafter "*Response to Motion to Compel*"); (4) *Motion to Establish Protective Order* filed by AT&T Communications of the South Central States ("AT&T"), Inc., TCG MidSouth, Inc. ("TCG") and the

Southeastern Competitive Carriers Association (“SECCA”) (hereinafter “*Motion for Protective Order*”); (5) *AT&T Communications of the South Central States, Inc.*['s], *TCG MidSouth, Inc.* 's and the *Southeastern Competitive Carriers Association's List of Persons to be Deposed and Request for Additional Time for Depositions* (hereinafter “*Request for Additional Time for Depositions*”); (6) *BellSouth's Response to AT&T Communications of the South Central States, Inc.*['s], *TCG MidSouth, Inc.* 's and the *Southeastern Competitive Carriers Association's List of Persons to be Deposed and Request for Additional Time for Depositions and Motion to Quash* (hereinafter “*Motion to Quash*”); and (7) *Reply of AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association to BellSouth Telecommunications, Inc.'s Response to List of Persons to be Deposed and Request for Additional Time for Depositions and Motion to Quash* (hereinafter “*Reply to Motion to Quash*”).

Background

A Pre-Hearing Conference was held on September 6, 2001. At that time, the Pre-Hearing Officer informed the parties that discovery under the Procedural Schedule controlling this docket shall encompass the following issues related to the evaluation of existing testing of BellSouth's Operations Support System (“OSS”): the regionality of the OSS, the reliability that the Authority should place on other states' OSS tests, and the extent to which commercial usage can substitute for testing. The Pre-Hearing Officer agreed to consider additional discovery on a limited basis, upon the request of any party, after the December 3 through 7, 2001 Hearing on regionality.

On September 13, 2001, the Pre-Hearing Officer issued an *Order Establishing*

Issues and Procedural Schedule, which directed the parties to file their Discovery Requests by September 17, 2001, their Objections to Discovery Requests by September 24, 2001, and their Responses to Discovery Objections by September 27, 2001.

On September 17, 2001, AT&T, TCG and SECCA filed their joint *First Set of Interrogatories to BellSouth Telecommunications, Inc.* On September 24, 2001, BellSouth filed its *Objections*. In lieu of filing a Response to Discovery Objections, AT&T, TCG and SECCA filed their *Motion to Compel and Request for Additional Time for Depositions* on September 27, 2001. On October 1, 2001, AT&T, TCG and SECCA filed their *Motion for Protective Order*. *BellSouth's Response to AT&T's Motion to Compel* was filed on October 4, 2001.

On October 4, 2001, the Pre-Hearing Officer issued a Notice to the parties pursuant to Tenn. Comp. R. & Regs. 1220-1-2-.12, scheduling a Pre-Hearing Conference in this proceeding on Tuesday, October 9, 2001, for the purpose of aiding in the resolution of the discovery disputes arising from the above stated filings. In addition, pursuant to Tenn. Comp. R. & Regs. 1220-1-2-.06(2), the Notice directed AT&T, TCG and SECCA to file a Response, if any, to *BellSouth's Motion to Quash* by October 8, 2001. AT&T, TCG and SECCA filed the *Reply to Motion to Quash* on October 8, 2001.

The October 9, 2001 Pre-Hearing Conference

The parties in attendance at the September 6, 2001 Pre-Hearing Conference included:

BellSouth Telecommunications, Inc. ("BellSouth") – **Guy M. Hicks, Esq.**, 333 Commerce Street, 22nd Floor, Nashville, TN 37201-3300 and **Lisa Foshee, Esq.**, 675 West Peach Street, Suite 4300, Atlanta, GA 30375;

AT&T Communications of the South Central States, Inc. ("AT&T") – **Michael A. Hopkins, Esq.**, McKenna & Cuneo, L.L.P., 1900 K Street, Washington, D.C. 20006.

Southeastern Competitive Carriers Association ("SECCA") – **Henry Walker, Esq.**, Boulton, Cummings, Conners & Berry, 414 Union Street, No. 1600, P.O. Box 198062, Nashville, TN 37219-8062.

MCImetro Access Transmission Services, LLC ("MCImetro") – **Susan Berlin, Esq.**, 6 Concourse Parkway, Atlanta, GA 30328 (appearing telephonically).

As a preliminary matter, the Pre-Hearing Officer informed the parties that the purpose of the Pre-Hearing Conference was to give the parties an opportunity to resolve the pending discovery disputes themselves, or, if that is not possible, to obtain sufficient information to assist the Pre-Hearing Officer in resolving them. The Pre-Hearing Officer also informed the parties that copies of any discovery responses from other states used in any way in Tennessee must be filed with the Authority.

1. BellSouth's Objections and AT&T's Motion to Compel

The Pre-Hearing Officer directed the parties to address the unresolved issues arising from *BellSouth's Objections*. After considerable discussion, BellSouth agreed to supply to the Authority and the parties to this action all discovery materials BellSouth provided in the North Carolina proceedings convened pursuant to 47 U.S.C. §271, including the transcripts and the use of all KPMG and Hewlett Packard discovery.¹ BellSouth also agreed to provide to the Authority and the parties the transcripts from the Alabama proceedings.² In addition, BellSouth agreed to stipulate to the use in Tennessee of all discovery used in the §271 proceedings in Georgia in the context of the

¹ *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362 (Transcript of October 9, 2001 Pre-Hearing Conference, p. 16-17, 22. (hereinafter *OSS Docket*)).

² *Id.*, p. 32.

third party test.³

After additional discussion and a temporary recess to allow the parties to confer, the parties informed the Pre-Hearing Officer that the issues raised in *AT&T's Motion to Compel* had been resolved by agreement between the parties and requested that *AT&T's Motion to Compel* and BellSouth's *Response AT&T's Motion to Compel* be withdrawn.⁴ Accordingly, the Pre-Hearing Officer dismissed *AT&T's Motion to Compel* and BellSouth's *Response* thereto. *BellSouth's Objections* are dismissed as moot. BellSouth is directed to update the discovery responses from other states it files in Tennessee where appropriate.

2. AT&T's Motion for Protective Order

The Pre-Hearing Officer then directed the parties to address *AT&T's Motion for Protective Order*. BellSouth did not file a response to the *Motion for Protective Order*.⁵ When asked whether BellSouth intended to respond to the *Motion for Protective Order*, BellSouth stated that it did not intend to file such a response.⁶

Thereafter, considerable discussion ensued. SECCA described the proposed protective agreement attached to the *Motion for Protective Order* as broader than the protective orders ordinarily used in Tennessee because it permits discovery material submitted thereunder to be used in other regulatory commissions' proceedings under appropriate protections provided by the other commissions.⁷ BellSouth stated that "the protective agreement is exactly the point we're here trying to make, that it makes sense

³ *Id.*, p. 17.

⁴ *Id.*, p. 52-3.

⁵ Tenn. Comp. R. & Regs. 1220-1-2-.06(2) states that, "Any party opposing a motion shall file and serve a response within seven (7) days after service of the motion." The *Motion for Protective Order* was filed on October 1, 2001.

⁶ *OSS Docket* (Transcript of October 9, 2001 Pre-Hearing Conference, p. 49).

⁷ *Id.*, p. 48.

to use these things on a region-wide basis. That's why we agreed to do it in North Carolina."⁸ After considering the statements of the parties, the Pre-Hearing Officer granted the *Motion for Protective Order*.⁹

3. AT&T's Request for Additional Time for Depositions and BellSouth's Motion to Quash

The Pre-Hearing Officer next addressed the list of deponants filed by AT&T, TCG and SECCA. The Pre-Hearing Officer initially observed that the large number of persons included on the list created logistical problems with regard to the Procedural Schedule.

The parties then engaged in substantial debate. BellSouth asserted that deposing certain of its employees more than once was burdensome, duplicative and cumulative.¹⁰ AT&T reiterated its assertion that it would not ask duplicative questions of the deponants.¹¹ BellSouth asked for certain restrictions to be placed on the questioning of deponants. The Pre-Hearing Officer declined to limit the questioning, subject to AT&T's commitment to avoid duplicative questions.¹²

After a temporary recess to allow for review and consultation regarding the witness list, AT&T agreed to reduce the number of persons it seeks to depose. AT&T then categorized these persons as Phase I witnesses, Phase II witnesses, and both Phase I and Phase II witnesses.

BellSouth stated that it had no objection to AT&T's request to produce a Phase II

⁸ *Id.*, p. 49-50.

⁹ *Id.*, p. 134-35.

¹⁰ *Id.*, p. 66, 67.

¹¹ *Id.*, p. 95.

¹² *Id.*, p. 102.

witness from Cap Gemini who would be most knowledgeable about the following:¹³

1. Overall test design
2. Working with BellSouth to draft the following parts of the Georgia third party test plan:
 - a. General Test Management & Pre-Ordering, Ordering and Provisioning
 - b. Metrics & Flow-Through Evaluation
 - c. Billing
 - d. Change Management
 - e. Systems Capacity Management
 - f. Maintenance & Repair

BellSouth stated that it would endeavor to produce such a witness during Phase II discovery.

To facilitate the parties' efforts, the Pre-Hearing Officer amended the Procedural Schedule by extending the period for taking depositions beyond the original dates. Under the amended Procedural Schedule, depositions of the following BellSouth and KPMG Phase I witnesses may be taken from **Monday, October 29, 2001** through **Monday, November 19, 2001**:¹⁴

BellSouth

1. Mark Butterworth
2. Al Heartley
3. Ron Pate
4. Ken Ainsworth
5. James Saville
6. Kathy Wilson-Chu
7. Pam Napier

KPMG Consulting, Inc.

8. Dave Wirsching

In addition, the Pre-Hearing Officer modified the Procedural Schedule to allow the depositions of the following BellSouth and KPMG Phase II witnesses to be

¹³ *Id.*, p. 124.

scheduled any time between October 9, 2001 and one day prior to the date that rebuttal testimony is due in Phase II.¹⁵

BellSouth

1. Milton McElroy
2. William Stacy
3. Victor Wakeling

KPMG Consulting, Inc.

8. Adina Brownstein
9. Larry Freundlich
10. Liz Fucillo
11. Walton Smith
12. Alan Salzburg
13. Person most knowledgeable about setting the sample sized for the Georgia Third Party Test
14. Graham Watkins
15. Bill Wahl
16. Linda Gray
17. Mary Beth Keane
18. John Cacopardo
19. John Gena

At the Pre-Hearing Conference, the Pre-Hearing Officer took under advisement AT&T's request to for additional time to depose the following Phase II witnesses.¹⁶

Hewlett Packard Company

1. Whit Matteson
2. Person most knowledgeable about HP's role as third party tester in the Georgia third party test and who is most knowledgeable about HP's relationship with BellSouth during the time HP was acting as the third party tester in Georgia.
3. Person most knowledgeable about the building of interfaces during the Georgia third party test and the working relationship with BellSouth to build those interfaces.

¹⁴ *Id.*, p. 103.

¹⁵ *Id.*, p. 104, 113, 125.

¹⁶ *Id.*, p. 113.

Cap Gemini

4. Person most knowledgeable about:
 1. Overall test design
 2. Working with BellSouth to draft the following parts of the Georgia third party test plan:
 - a. General Test Management & Pre-Ordering, Ordering & Provisioning
 - b. Metrics & Flow through Evaluation
 - c. Billing
 - d. Change Management
 - e. Systems Capacity Management
 - f. Maintenance & Repair

The depositions of these Phase II witnesses may also be scheduled any time between October 9, 2001 and one day prior to the date that rebuttal testimony is due in Phase II. The Pre-Hearing Officer observed that the date that rebuttal testimony is due in Phase II has not yet been set.

The Pre-Hearing Officer further determined that the deposition of Price Waterhouse Coopers, LLP ("PWC") witness Roger Lattimore would proceed as scheduled on Tuesday October 16, 2001 unless PWC fails to provide the discovery material requested and agreed to by AT&T by Friday, October 12, 2001. In that event, the Tennessee deposition of Roger Lattimore will be rescheduled.¹⁷

The Pre-Hearing Officer granted AT&T's *Request for Additional Time for Depositions*. The Pre-Hearing Officer then denied BellSouth's *Motion to Quash*.

Witness Lists

The parties are directed to file a complete list of the witnesses that they intend to present at the Hearing scheduled for Monday, December 3 through Friday, December 7, 2001. The witnesses shall be listed in the order of their presentation at the Hearing. The

¹⁷ *Id.*, p. 134.

Pre-Hearing Officer expects the parties to present their cases through witnesses who testify in a logical sequence according to subject matter. The Witness Lists shall be filed with the Authority and served on all parties no later than **3:00 p.m., Monday, November 26, 2001.**

IT IS THEREFORE ORDERED THAT:

1. BellSouth Telecommunications, Inc. shall file with the Authority and serve on all parties no later than **3:00 p.m., Monday, October 21, 2001** all discovery materials BellSouth provided in the North Carolina proceedings convened pursuant to 47 U.S.C. §271, including the transcripts and the KPMG and Hewlett Packard discovery materials.
2. BellSouth Telecommunications, Inc. shall file with the Authority and serve on all parties no later than no later than **3:00 p.m., Monday, October 21, 2001** the transcripts from the Alabama proceedings convened pursuant to 47 U.S.C. §271.
3. BellSouth Telecommunications, Inc. shall file with the Authority and serve on all parties no later than **3:00 p.m., Monday, October 21, 2001** the discovery materials used in the context of the third party testing in the Georgia proceedings convened pursuant to 47 U.S.C. §271.
4. BellSouth Telecommunications, Inc. is directed to update the discovery responses from other states it files in Tennessee where appropriate.
5. The request of AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association to withdraw their *Motion of to Compel Responses by BellSouth Telecommunication, Inc. to Their First Set of Interrogatories and First Set of Requests for Production of Documents to BellSouth* is granted.

6. BellSouth's request to withdraw its *Response to the Motion of AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association to Compel Responses by BellSouth Telecommunication, Inc. to Their First Set of Interrogatories and First Set of Requests for Production of Documents to BellSouth* is granted.

7. *BellSouth's Objections to First Interrogatories and Request for Production of Documents of AT&T and SECCA* are dismissed as moot.

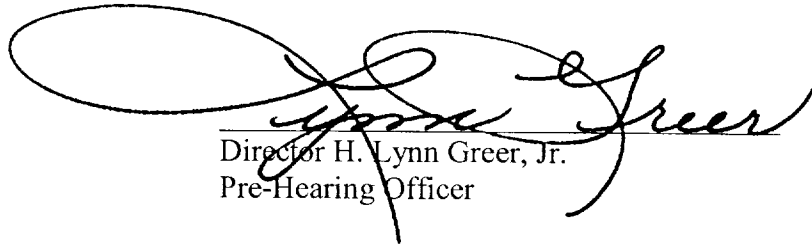
8. The *Motion to Establish Protective Order* filed by AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association is granted.

9. *AT&T Communications of the South Central States, Inc.['s], TCG MidSouth, Inc.'s and the Southeastern Competitive Carriers Association's List of Persons to be Deposed and Request for Additional Time for Depositions* is granted. The Procedural Schedule is hereby amended to reflect that the time for taking the depositions of Phase I witnesses shall extend from **Monday, October 29, 2001** through **Monday, November 19, 2001**. The depositions of the Phase II witnesses listed herein may be taken from October 9, 2001 until one day prior to the date that rebuttal testimony is due in Phase II.

10. *BellSouth's Response to AT&T Communications of the South Central States, Inc.['s], TCG MidSouth, Inc.'s and the Southeastern Competitive Carriers Association's List of Persons to be Deposed and Request for Additional Time for Depositions and Motion to Quash* is denied.

11. The parties are directed to file a complete list of the witnesses that they intend to present at the Hearing scheduled for Monday, December 3 through Friday, December 7,

2001. The witnesses shall be listed in the order of their presentation at the Hearing. The Witness Lists shall reflect a logical order of witnesses according to subject matter. The Witness Lists shall be filed with the Authority and served on all parties no later than 3:00 p.m., Monday, November 26, 2001.



Director H. Lynn Greer, Jr.
Pre-Hearing Officer



K. David Waddell, Executive Secretary